

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH JEROME WRIGHT,

Plaintiff,

v.

IDALBERTO ZALDIVAR-GALVES,

Defendant.

No. 1:24-cv-01029 JLT GSA (PC)

ORDER DENYING PLAINTIFF'S  
REQUESTS FOR SUBPOENA FORMS &  
FOR SUBPOENA

(ECF Nos. 37, 42)

ORDER DENYING PLAINTIFF'S MOTION  
FOR THE APPOINTMENT OF COUNSEL

(ECF No. 39)

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court are Plaintiff's request for subpoena forms and his request for subpoena (ECF Nos. 37, 42), and his motion for the appointment of counsel (ECF No. 39).<sup>1</sup> For the reasons stated below, all three motions will be denied.

I. REQUESTS FOR SUBPOENA FORMS & SUBPOENA

<sup>1</sup> Plaintiff has also filed two motions in limine in preparation for trial. See ECF Nos. 40, 41. The Court notes that they have been filed prematurely as it has yet to be determined whether this case will proceed past the dispositive motion phase of the proceedings. In addition, because motions in limine are typically addressed by the District Judge who presides over the trial, should there be one, the Undersigned does not address these two motions herein.

1           A. Plaintiff's Two Requests

2           Plaintiff has filed two requests, one for subpoena forms and the other to grant his request  
3 to subpoena two medical staffers. See ECF Nos. 37, 42 respectively. In support of his first  
4 request, docketed on September 5, 2025, Plaintiff states that his pretrial motions are due by  
5 October 16, 2025. See ECF No. 37. As a result, he asks for the forms as well as “a list of  
6 standard pre-trial motions” and “any information that may assist me” He also requests a  
7 “secondary fee waiver for subpoenas.” Id.

8           In Plaintiff's second request, docketed September 22, 2025, he asks the Court to permit  
9 him to subpoena two medical staffers who are currently employed by the California Substance  
10 Abuse Treatment Facility. ECF No. 42 at 1. Plaintiff contends that both individuals are aware of  
11 his injuries, and they are willing to be subpoenaed for trial. Id.

12           B. Discussion

13           Both Plaintiff's requests, as well as the request in the first motion which asks the Court to  
14 waive his subpoena fees, must be denied as prematurely filed. Moreover, the due date for  
15 dispositive / pretrial motions, which is October 16, 2025 (see ECF No. 34 at 3) has not yet  
16 arrived, nor has this case been set for trial. Therefore, to provide Plaintiff with subpoena forms  
17 or, permit him to subpoena witnesses at this point would be premature.

18           Plaintiff is also advised that typically the Court does not waive subpoena fees for  
19 prisoners who are proceeding in forma pauperis with their case. For these reasons, both motions  
20 will be denied.

21           II. MOTION FOR THE APPOINTMENT OF COUNSEL

22           A. Plaintiff's Motion

23           In support of Plaintiff's motion for the appointment of counsel, Plaintiff states, in part,  
24 that he cannot afford counsel; that this case is complex involving medical legal issues; that he is  
25 financially poor. ECF No. 39 at 1,2. Plaintiff also argues that the appointment of counsel would  
26 save the Court time and resources with at least the appointment of co-counsel; that the complex  
27 issues in this case will require nurses, primary care provider-practitioner and orthopedic surgeon  
28 testimony; and that the law library is only open two days a week hindering research and copying

1 material. Id.

2 B. Applicable Law

3 District courts lack authority to require counsel to represent indigent prisoners in section  
4 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional  
5 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28  
6 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
7 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional  
8 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as  
9 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
10 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
11 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
12 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
13 legal education and limited law library access, do not establish exceptional circumstances that  
14 warrant a request for voluntary assistance of counsel.

15 C. Discussion

16 Plaintiff’s motion for the appointment of counsel must be denied. Plaintiff has  
17 successfully litigated this matter up to the dispositive motion phase. This fact establishes that  
18 Plaintiff may have success with his case on its merits. It also shows that Plaintiff has the ability  
19 to articulate his claims on his own despite the complexity of the legal issues that are involved in  
20 it.

21 For these reasons, having considered the factors under Palmer, the Court finds that  
22 Plaintiff failed to meet his burden of demonstrating exceptional circumstances warranting the  
23 appointment of counsel at this time. Therefore, the motion will be denied.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff’s two requests regarding subpoenas (ECF Nos. 37, 42) are DENIED as  
26 having been PREMATURELY FILED, and  
27 & 2. Plaintiff’s motion for the appointment of counsel (ECF No. 39) is denied without  
28 prejudice.

1  
2 IT IS SO ORDERED.

3 Dated: September 24, 2025

/s/ Gary S. Austin  
4 UNITED STATES MAGISTRATE JUDGE  
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